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8 **UNITED STATES DISTRICT COURT**
9 **CENTRAL DISTRICT OF CALIFORNIA, WESTERN DIVISION**

10 HENRY BARNHILL,
11 Plaintiff,

12 v.

13 CITY OF HEMET, OFFICER BRETT
14 MAYNARD; OFFICER JOSHUA
15 BISHOP; OFFICER PEDRO AGUILA;
16 CORPORAL DOUGLAS KLINZING;
17 JAMIE GONZALEZ; CATHERINE
18 TIPTON; and DOES 1-10, inclusive,
19 Defendants.

Case No. 5:23-cv-00589 JGB-SPx
[District Judge: Hon. Jesus G. Bernal
Magistrate Judge: Hon. Sheri Pym]

**PROTECTIVE ORDER RE
CONFIDENTIAL DOCUMENTS**

[NOTE CHANGES BY THE COURT
TO SECTIONS 1 AND 5.5]

20 PURSUANT TO THE STIPULATION OF THE PARTIES (“Stipulation for
21 Entry of Protective Order re Confidential Documents”) (docket no. 32), and pursuant
22 to the Court’s inherent and statutory authority, including but not limited to the Court’s
23 authority under the applicable Federal Rules of Civil Procedure and the United States
24 District Court, Central District of California Local Rules; after due consideration of all
25 of the relevant pleadings, papers, and records in this action; and upon such other
26 evidence or argument as was presented to the Court; Good Cause appearing therefor,
27 and in furtherance of the interests of justice,
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1 IT IS HEREBY ORDERED that:

2 **1. SCOPE OF PROTECTION.**

3 The protections conferred by the parties' Stipulation and this Order cover not
4 only Protected Material/Confidential Documents (as defined below), but also (1) any
5 information copied or extracted from Protected Material; (2) all copies, excerpts,
6 summaries, or compilations of Protected Material; and (3) any testimony,
7 conversations, or presentations by Parties or their Counsel that might reveal Protected
8 Material. However, the protections conferred by the parties' Stipulation and this Order
9 do *not* cover the following information: (a) any information that is in the public domain
10 at the time of disclosure to a Receiving Party or becomes part of the public domain after
11 its disclosure to a Receiving Party as a result of publication not involving a violation of
12 this Order, including becoming part of the public record through trial or otherwise; and
13 (b) any information known to the Receiving Party prior to the disclosure or obtained by
14 the Receiving Party after the disclosure from a source who obtained the information
15 lawfully and under no obligation of confidentiality to the Designating Party.

16 Any use of Protected Material at trial shall not be governed by this Order, but
17 may be governed by a separate agreement or order. The Definitions section of the
18 parties' associated Stipulation (§ 2) is incorporated by reference herein.

19 Any use of Protected Material at trial shall be governed by the Orders of the trial
20 judge; this Protective Order does not govern the use of Protected Material at trial.

21 Nothing in parties' Stipulation or this Order shall be construed as binding upon
22 the Court or its court personnel, who are subject only to the Court's internal procedures
23 regarding the handling of materials filed or lodged, including materials filed or lodged
24 under seal.

25 **A. PURPOSES AND LIMITATIONS.**

26 Disclosure and discovery activity in this action are likely to involve production
27 of confidential, proprietary, or private information for which special protection from
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1 public disclosure and from use for any purpose other than prosecuting or defending this
2 litigation would be warranted. Accordingly, the parties have stipulated to and
3 petitioned the court to enter the following Order.

4 The parties have acknowledged that this Order does not confer blanket
5 protections on all disclosures or responses to discovery and that the protection it affords
6 extends only to the specified information or items that are entitled to treatment as
7 confidential.

8 The parties further acknowledge, as set forth below, that this Order creates no
9 entitlement to file confidential information under seal; Central District Local Rules 79-
10 5.1 and 79-5.2 set forth the procedures that must be followed and reflect the standards
11 that will be applied when a party seeks permission from the Court to file material under
12 seal.

13 Nothing in the parties' Stipulation or in this Order shall be construed as any
14 entitlement for the parties to file any documents or materials under seal; nor shall the
15 parties' Stipulation or this Order be construed as any exemption from any of the
16 requirements of Central District Local Rule 79-5. The parties are required to comply
17 with the applicable Local Rules in their entirety. If the Court denies a party's request
18 for filing material under seal, that material may be filed in the public record unless
19 otherwise instructed by the Court.

20 Nothing in this Order shall be construed so as to require or mandate that any
21 Party disclose or produce privileged information or records that could be designated as
22 Confidential Documents/Protected Material hereunder.

23 **2. DURATION OF PROTECTION.**

24 Even after final disposition of this litigation, the confidentiality obligations
25 imposed by this Order shall remain in effect until a Designating Party agrees otherwise
26 in writing or a court order otherwise directs.

27 Final disposition shall be deemed to be the later of (1) dismissal of all claims and
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1 defenses in this action, with or without prejudice; or (2) final judgment herein after the
 2 completion and exhaustion of all appeals, rehearings, remands, trials, or reviews of this
 3 action, including the time limits for filing any motions or applications for extension of
 4 time pursuant to applicable law.

5 **3. DESIGNATION OF PROTECTED MATERIAL/CONFIDENTIAL**
 6 **DOCUMENTS.**

7 3.1. Exercise of Restraint and Care in Designating Material for Protection.

8 Each Party or non-party that designates information or items for protection under
 9 the parties' Stipulation and this Order must take care to limit any such designation to
 10 specific material that qualifies under the appropriate standards. A Designating Party
 11 must take care to designate for protection only those parts of material, documents,
 12 items, or oral or written communications that qualify – so that other portions of the
 13 material, documents, items or communications for which protection is not warranted
 14 are not swept unjustifiably within the ambit of this Order.

15 Mass, indiscriminate, or routine designations are prohibited. Designations that
 16 are shown to be clearly unjustified, or that have been made for an improper purpose
 17 (e.g., to unnecessarily encumber or inhibit the case development process, or to impose
 18 unnecessary expenses and burdens on other parties), expose the Designating Party to
 19 sanctions.

20 If it comes to a Party's or a non-party's attention that information or items that it
 21 designated for protection do not qualify for protection at all, or do not qualify for the
 22 level of protection initially asserted, that Party or non-party must promptly notify all
 23 other parties that it is withdrawing the mistaken designation.

24 3.2. Manner and Timing of Designations. Except as otherwise provided in this
 25 Order, or as otherwise stipulated or ordered, material that qualifies for protection under
 26 this Order must be clearly so designated before the material is disclosed or produced.

27 Designation in conformity with this Order requires:
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1 (a) for information in documentary form (apart from transcripts of depositions
2 or other pretrial or trial proceedings, and regardless of whether produced in hardcopy
3 or electronic form), that the Producing Party affix the legend “CONFIDENTIAL” to
4 each page that contains Protected Material. If only a portion or portions of the material
5 on a page qualifies for protection, the Producing Party also must clearly identify the
6 protected portion(s) (e.g., by making appropriate markings in the margins) and must
7 specify, for each portion that it is “CONFIDENTIAL.” The placement of such
8 “CONFIDENTIAL” stamp on such page(s) shall not obstruct the substance of the
9 page’s (or pages’) text or content.

10 A Party or non-party that makes original documents or materials available for
11 inspection need not designate them for protection until after the Receiving Party has
12 indicated which material it would like copied and produced. During the inspection and
13 before the designation, all of the material made available for inspection shall be deemed
14 “CONFIDENTIAL.” After the Receiving Party has identified the documents it wants
15 copied and produced, the Producing Party must determine which documents, or
16 portions thereof, qualify for protection under this Order. Then, before producing the
17 specified documents, the Producing Party must affix the “CONFIDENTIAL” legend to
18 each page that contains Protected Material. If only a portion or portions of the material
19 on a page qualifies for protection, the Producing Party also must clearly identify the
20 protected portion(s) (e.g., by making appropriate markings in the margins).

21 (b) for testimony given in deposition or in other pretrial or trial proceedings,
22 that the Party or non-party offering or sponsoring the testimony identify on the record,
23 before the close of the deposition, hearing, or other proceeding, all protected testimony,
24 and further specify any portions of the testimony that qualify as “CONFIDENTIAL.”
25 When it is impractical to identify separately each portion of testimony that is entitled
26 to protection, and when it appears that substantial portions of the testimony may qualify
27 for protection, the Producing Party may invoke on the record (before the deposition or
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1 proceeding is concluded) a right to have up to twenty (20) days to identify the specific
2 portions of the testimony as “CONFIDENTIAL.” Only those portions of the
3 testimony that are appropriately designated as “CONFIDENTIAL” for protection
4 within the 20 days shall be covered by the provisions of the parties’ Stipulation and this
5 Protective Order.

6 The court reporter must affix to each such page the legend “CONFIDENTIAL,” as
7 instructed by the Producing Party.

8 (c) for information produced in some form other than documentary, and for
9 any other tangible items (including but not limited to information produced on disc or
10 electronic data storage device), that the Producing Party affix in a prominent place on
11 the exterior of the container or containers in which the information or item is stored the
12 legend “CONFIDENTIAL.” If only portions of the information or item warrant
13 protection, the Producing Party, to the extent practicable, shall identify the protected
14 portions, specifying the material as “CONFIDENTIAL.”

15 3.3. Inadvertent Failures to Designate. If timely corrected (preferably, though
16 not necessarily, within 30 days of production or disclosure of such material), an
17 inadvertent failure to designate qualified information or items as “CONFIDENTIAL”
18 does not, standing alone, waive the Designating Party’s right to secure protection under
19 the parties’ Stipulation and this Order for such material. If material is appropriately
20 designated as “CONFIDENTIAL” *after* the material was initially produced, the
21 Receiving Party, on timely notification of the designation, must make reasonable efforts
22 to assure that the material is treated in accordance with the parties’ Stipulation and this
23 Order.

24 3.4. Alteration of Confidentiality Stamp Prohibited. A Receiving Party shall
25 not alter, edit, or modify any Protected Material so as to conceal, obscure, or remove a
26 “CONFIDENTIAL” stamp or legend thereon; nor shall a Receiving Party take any
27 other action so as to make it appear that Protected Material is not subject to the terms
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1 and provisions of the parties' Stipulation and this Order. However, nothing in this
2 section shall be construed so as to prevent a Receiving Party from challenging a
3 confidentiality designation subject to the provisions of section 4, *infra*.

4 **4. CHALLENGING CONFIDENTIALITY DESIGNATIONS.**

5 4.1. Timing of Challenges. Any Party or non-party may challenge a
6 designation of confidentiality at any time that is consistent with the Court's Scheduling
7 Order. Unless a prompt challenge to a Designating Party's confidentiality designation
8 is necessary to avoid foreseeable substantial unfairness, unnecessary economic
9 burdens, or a later significant disruption or delay of the litigation, a Party does not waive
10 its right to challenge a confidentiality designation by electing not to mount a challenge
11 promptly after the original designation is disclosed.

12 4.2. Meet and Confer. Prior to challenging a confidentiality designation, a
13 Party shall initiate a dispute resolution process by providing written notice of each
14 specific designation it is challenging, and describing the basis (and supporting authority
15 or argument) for each challenge. To avoid ambiguity as to whether a challenge has been
16 made, the written notice must recite that the challenge to confidentiality is being made
17 in accordance with this Protective Order. The parties shall attempt to resolve each
18 challenge in good faith and must begin the process by conferring directly (in voice to
19 voice dialogue, either in person, telephonically, or by other comparable means, but *not*
20 by correspondence) within 14 days of the date of service of notice.

21 In conferring, the Party challenging the designation must explain the specific
22 basis for its belief that the confidentiality designation was not proper and must give the
23 Designating Party an opportunity to review the designated material, to reconsider the
24 circumstances, and, if no change in designation is offered, to explain the basis for the
25 chosen designation. A Party may proceed to the next stage of the challenge process only
26 if it has engaged in this meet and confer process first or establishes that the Designating
27 Party is unwilling to participate in the meet and confer process in a timely manner.

1 Frivolous challenges, and those challenges made for an improper purpose (*e.g.*,
2 to harass or impose unnecessary expenses and burdens on other parties), may expose
3 the Party making the challenge to sanctions.

4 4.3. Judicial Intervention. If the Parties cannot resolve a confidentiality
5 challenge without court intervention, the Party challenging the designation shall file
6 and serve a motion to remove confidentiality (under the applicable rules for filing and
7 service of discovery motions) within 14 days of the parties agreeing that the meet and
8 confer process will not resolve their dispute, or by the first day of trial of this matter,
9 whichever date is earlier – unless the parties agree in writing to a longer time.

10 The parties must comply with Central District Local Rules 37-1 and 37-2
11 (including the joint stipulation re discovery dispute requirement) in any motion
12 associated with this Protective Order.

13 The Party wishing to challenge a designation may file a motion challenging a
14 confidentiality designation at any time that is consistent with the Court's Scheduling
15 Order, if there is good cause for doing so, including a challenge to the designation of a
16 deposition transcript or any portions thereof. Any motion brought pursuant to this
17 provision must be accompanied by a competent declaration affirming that the movant
18 has complied with the meet and confer requirements imposed by the preceding
19 paragraph.

20 The burden of persuasion in any such challenge proceeding shall be on the
21 Designating Party, regardless of whether the Designating Party is the moving party or
22 whether such Party sought or opposes judicial intervention. Frivolous challenges, and
23 those made for an improper purpose (*e.g.*, to harass or impose unnecessary expenses
24 and burdens on other parties) may expose the Challenging Party to sanctions. Unless
25 the Designating Party has waived the confidentiality designation by failing to oppose a
26 motion to remove confidentiality as described above, all parties shall continue to afford
27 the material in question the level of protection to which it is entitled under the Producing
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1 Party's designation until the court rules on the challenge.

2 4.4. Withdrawal of "CONFIDENTIAL" Designation. At its discretion, a
3 Designating Party may remove Protected Material/Confidential Documents from some
4 or all of the protections and provisions of the parties' Stipulation and this Order at any
5 time by any of the following methods:

6 (a) Express Written Withdrawal. A Designating Party may withdraw a
7 "CONFIDENTIAL" designation made to any specified Protected Material/Confidential
8 Documents from some or all of the protections of the parties' Stipulation and this Order
9 by an express withdrawal in a writing signed by such Party (or such Party's Counsel,
10 but not including staff of such Counsel) that specifies and itemizes the Disclosure or
11 Discovery Material previously designated as Protected Material/Confidential
12 Documents that shall no longer be subject to all or some of the provisions of the parties'
13 Stipulation and Order. Such express withdrawal shall be effective when transmitted or
14 served upon the Receiving Party. If a Designating Party is withdrawing Protected
15 Material from only some of the provisions/protections of the parties' Stipulation and
16 this Order, such Party must state which specific provisions are no longer to be enforced
17 as to the specified material for which confidentiality protection hereunder is withdrawn.
18 Otherwise, such withdrawal shall be construed as a withdrawal of such material from
19 all of the protections/provisions of the parties' Stipulation and this Order;

20 (b) Express Withdrawal on the Record. A Designating Party may withdraw a
21 "CONFIDENTIAL" designation made to any specified Protected Material/
22 Confidential Documents from all of the provisions/protections of the parties'
23 Stipulation and this Order by verbally consenting in court proceedings on the record to
24 such withdrawal – provided that such withdrawal specifies the Disclosure or Discovery
25 Material previously designated as Protected Material/Confidential Documents that
26 shall no longer be subject to any of the provisions of the parties' Stipulation and this
27 Order. A Designating Party is not permitted to withdraw Protected Material from only
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1 some of the protections/ provisions of the parties' Stipulation and this Order by this
2 method;

3 (c) Implicit Withdrawal by Publication or Failure to Oppose Challenge. A
4 Designating Party shall be construed to have withdrawn a "CONFIDENTIAL"
5 designation made to any specified Protected Material/Confidential Documents from all
6 of the provisions/protections of the parties' Stipulation and this Order by either
7 (1) making such Protected Material/Confidential Records part of the public record –
8 including but not limited to attaching such as exhibits to any filing with the Court
9 without moving, prior to such filing, for the Court to seal such records; or (2) failing to
10 timely oppose a Challenging Party's motion to remove a "CONFIDENTIAL"
11 designation to specified Protected Material/Confidential Documents.

12 Nothing in the parties' Stipulation and this Order shall be construed so as to
13 require any Party to file Protected Material/Confidential Documents under seal, unless
14 expressly specified herein.

15 **5. ACCESS TO AND USE OF PROTECTED MATERIAL.**

16 5.1. Basic Principles. A Receiving Party may use Protected Material that is
17 disclosed or produced by another Party or by a non-party in connection with this case
18 only for preparing, prosecuting, defending, or attempting to settle this litigation – up to
19 and including final disposition of the above-entitled action – and not for any other
20 purpose, including any other litigation or dispute outside the scope of this action. Such
21 Protected Material may be disclosed only to the categories of persons and under the
22 conditions described in the parties' Stipulation and this Order. When the above entitled
23 litigation has been terminated, a Receiving Party must comply with the provisions of
24 section 9, below (FINAL DISPOSITION).

25 Protected Material must be stored and maintained by a Receiving Party at a
26 location and in a manner that ensures that access is limited to the persons authorized
27 under the parties' Stipulation and its Order.

1 5.2. Disclosure of "CONFIDENTIAL" Information or Items. Unless
2 otherwise ordered by the Court or permitted in writing by the Designating Party, a
3 Receiving Party may disclose any information or item designated "CONFIDENTIAL"
4 only to:

5 (a) the Receiving Party's Outside Counsel of record in this action, as well as
6 employees of such Counsel to whom it is reasonably necessary to disclose the
7 information for this litigation;

8 (b) the officers, directors, and employees (including House Counsel) of the
9 Receiving Party to whom disclosure is reasonably necessary for this litigation – each
10 of whom, by accepting receipt of such Protected Material, thereby agree to be bound
11 by the parties' Stipulation and this Order;

12 (c) Experts (as defined in the parties' Stipulation) of the Receiving Party to
13 whom disclosure is reasonably necessary for this litigation – each of whom, by
14 accepting receipt of such Protected Material, thereby agree to be bound by the parties'
15 Stipulation and this Order;

16 (d) court reporters, their staffs, and Professional Vendors to whom disclosure
17 is reasonably necessary for this litigation – each of whom, by accepting receipt of such
18 Protected Material, thereby agree to be bound by the parties' Stipulation and this Order;

19 (e) during their depositions, witnesses in the action to whom disclosure is
20 reasonably necessary – each of whom, by accepting receipt of such Protected Material,
21 thereby agree to be bound by the parties' Stipulation and this Order. Pages of
22 transcribed deposition testimony or exhibits to depositions that reveal Protected
23 Material may not be disclosed to anyone except as permitted under the parties'
24 Stipulation and this Protective Order;

25 (f) the author or custodian of a document containing the information that
26 constitutes Protected Material, or other person who otherwise possessed or knew the
27 information.
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1 5.3. Notice of Confidentiality. Prior to producing or disclosing Protected
2 Material/Confidential Documents to persons to whom the parties' Stipulation and this
3 Order permits disclosure or production (see section 5.2, *supra*), a Receiving Party shall
4 provide a copy of this Order to such persons so as to put such persons on notice as to
5 the restrictions imposed upon them herein: except that, for court reporters, Professional
6 Vendors, and for witnesses being provided with Protected Material during a deposition,
7 it shall be sufficient notice for Counsel to give the witness a verbal admonition (on the
8 record, for witnesses) regarding the provisions of the parties' Stipulation and this Order
9 and such provisions' applicability to specified Protected Material at issue.

10 5.4. Reservation of Rights. Nothing in the parties' Stipulation and this Order
11 shall be construed so as to require any Producing Party to designate any records or
12 materials as "CONFIDENTIAL." Nothing in the parties' Stipulation or this Order shall
13 be construed so as to prevent the admission of Protected Material into evidence at the
14 trial of this action, or in any appellate proceedings for this action, solely on the basis
15 that such Disclosure or Discovery Material has been designated as Protected
16 Material/Confidential Documents. Notwithstanding the foregoing, nothing in the
17 parties' Stipulation or this Order shall be construed as a waiver of any privileges or of
18 any rights to object to the use or admission into evidence of any Protected Material in
19 any proceeding; nor shall anything herein be construed as a concession that any
20 privileges asserted or objections made are valid or applicable.

21 Nothing in the parties' Stipulation or this Order shall be construed so as to
22 prevent the Designating Party (or its Counsel or custodian of records) from having
23 access to and using Protected Material designated by that Party in the manner in which
24 such persons or entities would typically use such materials in the normal course of their
25 duties or profession – except that the waiver of confidentiality provisions shall apply
26 (see section 4.4(c), *supra*).

27 5.5. Requirement to File Confidential Documents Under Seal. Confidential
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1 Documents may be submitted in all law and motion proceedings before the Court if
2 done so with an application to file them under seal pursuant to Federal Rules of Civil
3 Procedure 5.2 and 26 and/or United States District Court, Central District of California
4 Local Rules 79-5.1 and 79-5.2 (as applicable) and pursuant to the provisions of the
5 parties' Stipulation and this Order. If any Receiving Party attaches any Confidential
6 Documents to any pleading, motion, or other paper to be filed, lodged, or otherwise
7 submitted to the Court, such Confidential Document(s) shall be filed/lodged with an
8 application to seal pursuant to Federal Rules of Civil Procedure 5.2 and 26 and/or
9 United States District Court, Central District of California Local Rules 79-5.1 and 79-
10 5.2 to the extent applicable.

11 However, this paragraph (§ 5.5) shall not be construed so as to prevent a
12 Designating Party or counsel from submitting, filing, lodging, or publishing any
13 document it has previously designated as a Confidential Document without compliance
14 with this paragraph's requirement to do so under seal (i.e., a producing-disclosing party
15 or counsel may submit or publish its own Confidential Documents without being in
16 violation of the terms of the parties' Stipulation and this Protective Order).

17 Furthermore, a Receiving Party shall be exempted from the requirements of this
18 paragraph as to any specifically identified Confidential Document(s) where – prior to
19 the submission or publication of the Confidential Document(s) at issue – the
20 Designating Party of such specifically identified Confidential Document(s) has
21 waived/withdrawn the protections of the parties' Stipulation and this Order (pursuant
22 to paragraph 4.4, *supra*).

23 A Receiving Party shall also be exempt from the sealing requirements of this
24 paragraph (§ 5.5) where the Confidential Documents/Protected Material at issue is/are
25 **not** documents, records, or information regarding:

26 (1) private, personal information contained in peace officer personnel files
27 (such as social security numbers, driver's license numbers or comparable personal
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1 government identification numbers, residential addresses, compensation or pension or
 2 personal property information, credit card numbers or credit information, dates of birth,
 3 tax records and information, information related to the identity of an officer's family
 4 members or co-residents, and comparable personal information about the officer or his
 5 family);

6 (2) any internal affairs or comparable investigation by any law enforcement
 7 agency into alleged officer misconduct; and/or

8 (3) the medical records or records of psychiatric or psychological treatment of
 9 any peace officer or party to this action.

10 Nothing in this paragraph shall be construed to bind the Court or its authorized
 11 staff so as to limit or prevent the publication of any Confidential Documents to the jury
 12 or factfinder, at the time of trial of this matter, where the Court has deemed such
 13 Confidential Documents to be admissible into evidence.

14 Nothing in the parties' Stipulation or in this Order shall be construed as any
 15 entitlement for the parties to file any documents or materials under seal; nor shall the
 16 parties' Stipulation or this Order be construed as any exemption from any of the
 17 requirements of Central District Local Rule 79-5. The parties are required to comply
 18 with the applicable Local Rules in their entirety. If the Court denies a party's request
 19 for filing material under seal, that material may be filed in the public record unless
 20 otherwise instructed by the Court.

21 **6. PROTECTED MATERIAL SUBPOENAED OR ORDERED PRODUCED**
 22 **IN OTHER LITIGATION.**

23 If a Party is served with a subpoena or a court order issued in other litigation that
 24 compels disclosure of any information or items in the Party's possession or control
 25 which had been designated in this action as "CONFIDENTIAL," that Party must:

26 (a) promptly notify in writing the Designating Party, preferably (though not
 27 necessarily) by facsimile or electronic mail. Such notification shall include a copy of
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1 the subpoena or court order at issue, if possible;

2 (b) promptly notify in writing the party who caused the subpoena or order to
3 issue in the other litigation that some or all of the material covered by the subpoena or
4 order is subject to the parties' Stipulation and this Protective Order. Such notification
5 shall include a specific reference to the parties' Stipulation and this Protective Order;
6 and

7 (c) cooperate with respect to all reasonable procedures sought to be pursued by
8 all sides in any such situation, while adhering to the terms of the parties' Stipulation
9 and this Order.

10 If the Designating Party timely seeks a protective order, the Party served with
11 the subpoena or court order shall not produce any information designated in this action
12 as "CONFIDENTIAL" before a determination by the court from which the subpoena
13 or order issued, unless the Party has obtained the Designating Party's permission. The
14 Designating Party shall bear the burden and expense of seeking protection in that court
15 of its confidential material – and nothing in these provisions should be construed as
16 authorizing or encouraging a Receiving Party in this action to disobey a lawful directive
17 from another court.

18 The purpose of this section is to ensure that the affected Party has a meaningful
19 opportunity to preserve its confidentiality interests in the court from which the
20 subpoena or court order issued.

21 **7. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL.**

22 **7.1. Unauthorized Disclosure of Protected Material.**

23 If a Receiving Party learns that, by inadvertence or otherwise, it has disclosed
24 Protected Material to any person or in any circumstance not authorized under the
25 parties' Stipulation and this Order, the Receiving Party must:

26 (a) notify in writing the Designating Party of the unauthorized disclosures;

27 (b) use its best efforts to retrieve all copies of the Protected Material;
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1 (c) inform the person or persons to whom unauthorized disclosures were made
2 of all the terms of this Order; and

3 (d) request that such person or persons consent to be bound by the Stipulation
4 and this Order.

5 7.2. Inadvertent Production of Privileged or Otherwise Protected Material.

6 When a Producing Party gives notice to Receiving Parties that certain
7 inadvertently produced material is subject to a claim of privilege or other protection,
8 the obligations of the Receiving Parties are those set forth in Federal Rule of Civil
9 Procedure 26(b)(5)(B). This provision is not intended to modify whatever procedure
10 may be established in an e-discovery order that provides for production without prior
11 privilege review. Pursuant to Federal Rule of Evidence 502(d) and (e), insofar as the
12 parties reach an agreement on the effect of disclosure of a communication or
13 information covered by the attorney-client privilege or work product protection, the
14 parties may incorporate their agreement in the stipulated protective order submitted to
15 the Court.

16 **8. PUBLICATION OF PROTECTED MATERIAL PROHIBITED.**

17 8.1. Filing of Protected Material.

18 Without advance written permission from the Designating Party, or a court order
19 secured after appropriate notice to all interested persons, a Receiving Party may not file
20 in the public record in this action any Protected Material. A Party that seeks to file
21 under seal any Protected Material must comply with the applicable Federal and Local
22 Rules.

23 Nothing in the parties' Stipulation or in this Order shall be construed as any
24 entitlement for the parties to file any documents or materials under seal; nor shall the
25 parties' Stipulation or this Order be construed as any exemption from any of the
26 requirements of Central District Local Rule 79-5. The parties are required to comply
27 with the applicable Local Rules in their entirety. If the Court denies a party's request
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1 for filing material under seal, that material may be filed in the public record unless
2 otherwise instructed by the Court.

3 8.2. Public Dissemination of Protected Material.

4 A Receiving Party shall not publish, release, post, or disseminate Protected
5 Material to any persons except those specifically delineated and authorized by the
6 parties' Stipulation and this Order (see section 5, *supra*); nor shall a Receiving Party
7 publish, release, leak, post, or disseminate Protected Material/Confidential Documents
8 to any news media, member of the press, website, or public forum (except as permitted
9 under this Order regarding filings with the Court in this action and under seal).

10 9. FINAL DISPOSITION.

11 Unless otherwise ordered or agreed in writing by the Producing Party, within
12 thirty (30) days after the final termination of this action (defined as the dismissal or
13 entry of judgment by the above named Court, or if an appeal is filed, the disposition of
14 the appeal), upon written request by the Producing Party, each Receiving Party must
15 return all Protected Material to the Producing Party – whether retained by the Receiving
16 Party or its Counsel, Experts, Professional Vendors, agents, or any non-party to whom
17 the Receiving Party produced or shared such records or information. As used in this
18 subdivision, “all Protected Material” includes all copies, abstracts, compilations,
19 summaries or any other form of reproducing or capturing any of the Protected Material,
20 regardless of the medium (hardcopy, electronic, or otherwise) in which such Protected
21 Material is stored or retained.

22 In the alternative, at the discretion of the Receiving Party, the Receiving Party
23 may destroy some or all of the Protected Material instead of returning it – unless such
24 Protected Material is an original, in which case, the Receiving Party must obtain the
25 Producing Party's written consent before destroying such original Protected Material.

26 Whether the Protected Material is returned or destroyed, the Receiving Party
27 must submit a written certification to the Producing Party (and, if not the same person
28

1 or entity, to the Designating Party) within thirty (30) days of the aforementioned written
2 request by the Designating Party that specifically identifies (by category, where
3 appropriate) all the Protected Material that was returned or destroyed and that affirms
4 that the Receiving Party has not retained any copies, abstracts, compilations, summaries
5 or other forms of reproducing or capturing any of the Protected material (in any
6 medium, including but not limited to any hardcopy, electronic or digital copy, or
7 otherwise).

8 Notwithstanding this provision, Counsel are entitled to retain an archival copy of
9 all pleadings, motion papers, transcripts, legal memoranda or other documents filed
10 with the Court in this action, as well as any correspondence or attorney work product
11 prepared by Counsel for the Receiving Party, even if such materials contain Protected
12 Material; however, any such archival copies that contain or constitute Protected
13 Material remain subject to this Protective Order as set forth in Section 2, above. This
14 Court shall retain jurisdiction in the event that a Designating Party elects to seek
15 enforcement of this Order, including sanctions for violation of the parties' Stipulation
16 and this Order.

17 **10. MISCELLANEOUS.**

18 10.1. Right to Further Relief. Nothing in the parties' Stipulation or this Order
19 abridges the right of any person to seek its modification by the Court in the future.

20 10.2. Right to Assert Other Objections. By stipulating to the entry of this
21 Protective Order pursuant to the parties' Stipulation, no Party waives any right it
22 otherwise would have to object to disclosing or producing any information or item on
23 any ground not addressed in the parties' Stipulation or this Order. Similarly, no Party
24 waives any right to object on any ground to use in evidence any of the material covered
25 by the parties' Stipulation and this Protective Order.

1 The provisions of the parties' Stipulation and this Protective Order shall be in
2 effect until further Order of the Court.

3 **IT IS SO ORDERED.**

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5 Dated: March 14, 2024



6 Honorable Sheri Pym
7 UNITED STATES MAGISTRATE JUDGE
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